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UNCLAS SECTION 01 OF 03 BRASILIA 002156

SIPDIS

STATE FOR WHA/BSC, EB/TPP/MTA/IPC SWILSON, AND CA/VO  
STATE PASS TO USTR FOR SCRININ, LYANG AND BPECK  
USDOC FOR  
4322/ITA/MAC/WH/OLAC/WBASTIAN/JANDERSEN/DMCDO UGALL/DRISCOLL  
USDOC FOR 3134/USFCS/OIO/EOLSON/DDEVITO  
TREASURY FOR OASIA/SEGAL  
NCS FOR DEMPSEY

E.O. 12958: N/A

TAGS: [KIPR](#) [ETRD](#) [KCRM](#) [PGOV](#) [ECON](#) [BR](#) [IPR](#)

SUBJECT: BRAZIL: PIRACY CPI'S SECOND IPR BILL

REFS: A) BRASILIA 2150 B) BRASILIA 2017 C) BRASILIA 1668

1. This is the second in a series of five cables on legislation put forward on July 16, 2004 by Deputies belonging to the Congressional Investigative Commission on Piracy (reftel). Below is Embassy's unofficial translation of the text of the second bill.

2. "Bill No. 3965/2004  
(of the Piracy CPI)

Modifies regulations in the Industrial Property Code.

The National Congress decrees:

Article 1 - This law modifies regulations in the Industrial Property Code.

Article 2 - Articles 183, 187 to 189, 190 to 194, 199, 204 and caput of art. 202 or Law no. 9.279, of May 14, 1996, enters into effect with the following edits:

"Art. 183. Commits crime against an invention patent or utility model whoever, with the intent to profit:

I - .....

II - .....

Penalty - detention of 2 (two) years and 2 (two) months to 4 (four) years, and fine. (New Wording)

Art. 184 .....

I - .....

II .....

Penalty: detention of 2 (two) years and 2 (two) months to 4 (four) years, and fine. (New Wording)

Art. 185 .....

Penalty - detention of 2(two) years and 2 (two) months to 4 (four) years, and fine. (New Wording)

Art. 187. Manufacture with intent to profit and without authorization of the owner, a product that incorporates the registered industrial design, or substantial imitation thereof that could cause error or confusion.

Penalty - detention of 2 (two) years and 2 (two) months to 4 (four) years, and fine. (New Wording)

Art. 188 .....

Penalty - detention of 2 (two) years and 2 (two) months to 4 (four) years, and fine. (New Wording)

Art. 189 Commits a crime against a trademark whoever, with the intent to profit:

I - .....

II - .....

Penalty - detention of 2 (two) years and 2 (two) months to 4 (four) years, and fine. (New Wording)

Art. 190 .....

I - .....

II - .....

Penalty - detention of 2 (two) years and 2 (two) months to 4 (four) years, and fine. (New Wording)

Art. 191 .....

Penalty - detention of 2 (two) years and 2 (two) months to 4 (four) years, and fine. (New Wording)

Art. 192 .....

Penalty - detention of 2 (two) years and 2 (two) months to 4 (four) years, and fine. (New Wording)

Art. 193 .....

Penalty - detention of 2 (two) years and 2 (two) months to 4 (four) years, and fine. (New Wording)

Art. 194 .....

Penalty - detention of 2 (two) years and 2 (two) months to 4 (four) years, and fine. (New Wording)

Art. 199. For the crimes covered under this Title the penal action will be unconditionally public, except in the cases covered under art. 193, 187, 189 and 195, for which the action will be private.

Art. 202. In addition to the preliminary mission of search and seizure, the interested party or Public Ministry can also request (New Wording):

I - .....

II - .....

Art. 204. Once the mission of search and seizure has been completed, in the case of private penal action, the party who requests it in bad faith, spirit of competition, mere whim or gross error, will be responsible for losses and damage."

Article 3 - Art. 196 of Law no. 9.279, of May 14, 1996, goes into effect with the following single paragraph added.

"Art. 196 .....

The detention penalties referred to in the caput of this article will be increased by two thirds if the crime is committed by criminal association or comes to affect more than one passive subject, independent of the penalties imposed for the crimes of bodily injury or death." (New Wording)

Article 4 - This law goes into effect on the date of its publication.

#### JUSTIFICATION

The bill that the Piracy CPI hereby presents has as its objective to modify the penal law, to combat piracy so prevalent in our society.

During all these months of work, besides all those directly affected by piracy, the Commission heard various representatives of the Public Ministry. They were unanimous in stating that despite the good intentions of the legislature with regard to Laws no. 9.099 and 10.259/00 concerning Special Civil and Criminal State and Federal Judgeships respectively, the regulations in art. 89 of Law 9.099, described in Law no. 10.259/00, create the impression that piracy is a crime of lesser importance.

Subject determination concedes the benefit of procedural sursis to the author of a crime whose minimum penalty is equal to or less than one year.

Since after the work done by CPI the connection between piracy and organized crime became overwhelmingly proven, the stiffening of some penalties is necessary, not simply to say that the law is rigorous, but to avoid that the people involved in these criminal organizations remain on the margins of the law, freely transiting the Brazilian territory, with so-called organized crime becoming more and more deep rooted, and reinforcing a "sense of impunity".

This is why we are proposing an increase in the penalties currently in place from detention of three months to one year or fine to detention of two years and two months to four years and fine.

The CPI is convinced that in addition to the force of the penalty of privation of liberty, the penalty of fines is essential as an educational tool; one should not substitute the other.

The remaining changes were only to insert into four penal types the expression "with the intent to profit", excluding from the crime in this way, people who have practiced this behavior without this intent.

Through the above and with the belief that the adoption of the measures hereby proposed will aid in the fight against piracy, the Piracy CPI counts on the support of the illustrious Deputies for the conversion of the bill into law.

Sessions Room, July 16, 2004

Deputy Medeiros, President  
Deputy Josias Quintal, Reporter  
End unofficial Embassy translation.  
Danilovich